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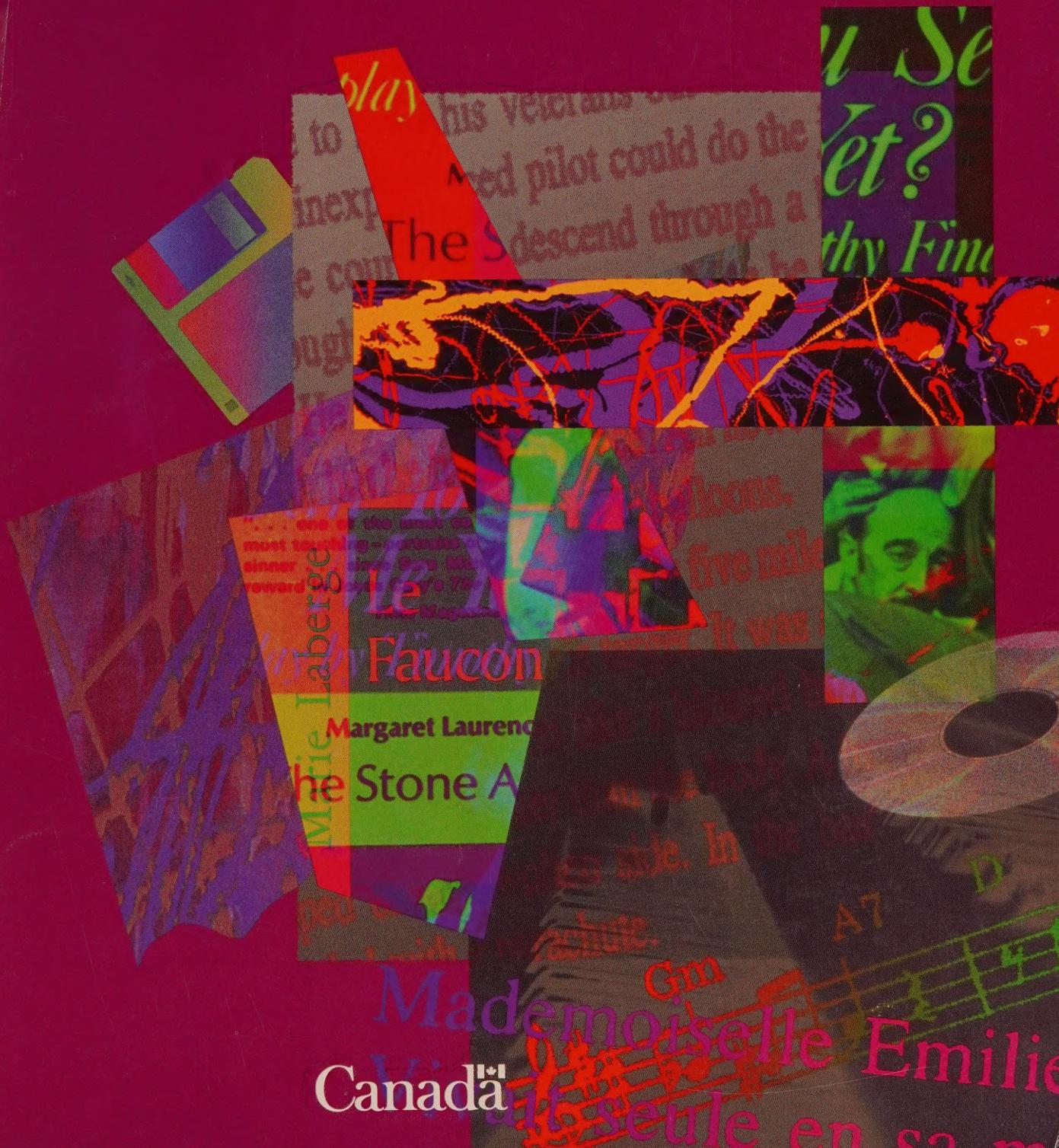
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## A GUIDE TO COPYRIGHTS





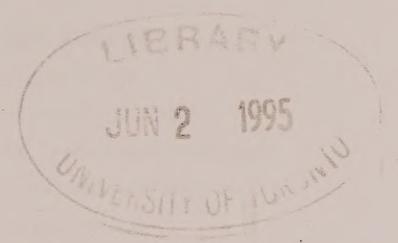
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# A GUIDE TO COPYRIGHTS



The information in this booklet is to be considered solely as a guide and should not be quoted as or considered to be a legal authority. It may become obsolete in whole or in part at any time without notice. Authority must be found in the *Copyright Act*, the *Copyright Rules*, and in decisions of the courts interpreting them.

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## INTRODUCTION

A poem, painting, musical score, computer program — all these are valuable creations, although perhaps no one can measure their worth. Some may earn a lot of money in the marketplace and others, none at all. Regardless of their merit or commercial value, Canadian law regards all such original creative works as copyright material. This means that if you own the copyright in a poem, song, or other work, you have a number of rights which are protected under the *Copyright Act*.

Simply put, the Act prohibits others from copying your work without your permission. Its purpose, like that of other pieces of intellectual property legislation, is to protect owners while promoting creativity and the orderly exchange of ideas.

Copyright law has become increasingly complex over the years to respond to a sophisticated communications environment. In this high-tech age, there are many new ways of producing creative works as well as of imitating or exploiting them without the creator's permission. The photocopier, videocassette recorder, and personal computer digital reproduction of songs are just a few examples of modern devices that help artists communicate with their audiences, but that also make it harder to control unauthorized use.

This guide gives some basic information about the intricate subject of copyright. Your original work is worth a great deal to you. It pays to protect your intellectual property by knowing your rights and how to use them.

### Purpose of this guide

In this guide we will look at what a copyright is, how it can benefit you, the advantages of registering your copyright, and how to go about it. Keep in mind that this booklet offers general information only, and does not cover all the complex issues of copyright law. For exact definitions and details, consult the *Copyright Act*, the *Copyright Rules*, and decisions of the courts in specific cases. You can find these texts in many libraries. You can also buy a copy of the Act and Rules in any bookstore selling federal government publications, or from:

Canada Communication Group  
Publishing Division  
Ottawa, Ontario  
K1A 0S9  
Tel.: (819) 956-4800  
Fax: (819) 994-1498

### The Copyright Office

The federal agency responsible for registering copyrights in Canada is the Copyright Office, directed by the Registrar of Copyrights. Registration is official acknowledgement of your copyright claim. It means that the Copyright Office has recorded the details which you provided, and gives you a certificate attesting to this fact.

In addition to registering copyrights, the Office maintains records of all registrations and other pertinent documents for public use and provides information to the public about the registration process.

Staff at the Copyright Office does not interpret the *Copyright Act* for you or counsel you in any matters other than registration or the use of Office records. For professional advice, you should consult a lawyer with knowledge in the field.

The records of the Copyright Office are open to the public; you may search through them to find information, such as who owns a certain copyright, and whether ownership has changed. Note that registrations recorded after October 1991 are on a computerized system. Staff will be pleased to give you the basic information you need to conduct your search.

---

The Copyright Office is part of a larger agency called the Canadian Intellectual Property Office (CIPO), which comes under Industry Canada. In addition to copyrights, CIPO is responsible for other forms of intellectual property. These are:

- **patents** — for inventions, that is, new kinds of technology;
- **industrial designs** — for the shape, pattern or ornamentation of an industrially produced useful object;
- **trade-marks** — words, symbols or designs, or combinations of these, used to distinguish the goods or services of one person from those of another; and
- **integrated circuit topographies** — the three-dimensional configurations of electronic circuits embodied in integrated circuit products, also called “microchips”.

### What is a copyright?

In the simplest terms, copyright means the right to copy. Only the owner of copyright — usually the creator of the piece — is allowed to produce or reproduce the work in question or to permit anyone else to do so. Suppose, for example, that you have written a novel. Copyright law rewards and protects your creative endeavour by giving you the sole right to publish or use your work in any number of ways. You may also choose not to publish your work and to prevent anyone else from doing so.

### What is covered by copyright

Copyright applies to all original literary, dramatic, musical and artistic works. Each of these general categories covers a wide range of creations. Here are just a few examples:

- literary works: books, pamphlets, poems and other works consisting of text, including computer programs;
- dramatic works: films, videos, plays, screenplays and scripts;
- musical works: compositions that consist of both words and music, or music only (note that lyrics only fall into the literary works category);
- artistic works: paintings, drawings, maps, photographs, sculptures and architectural works.

Keep in mind that copyright also applies to all kinds of recordings, such as records, cassettes, and compact discs, which are called “mechanical contrivances” in the *Copyright Act*. There is a separate copyright for the musical work, for example, a song, and for the device, such as a cassette that produces the song. Separate protection exists because the song and the sound recording are considered to be two different works.

The word “original” is key in defining a work that qualifies for copyright protection. Naturally, you cannot obtain a copyright for someone else’s creation. Originality can be tricky to determine, however, and many court cases revolve around the question of whether a work has been copied, even in part, from somebody else’s work.

Copyright means the sole right to produce or reproduce a work, or a substantial part of it in any form. It includes the right to perform the work, or any substantial part of it, or in the case of a lecture, to deliver it; if the work is unpublished, it includes the right to publish it, or any substantial part of it.

Copyright also includes the sole right to:

- produce, reproduce, perform or publish any translation of the work;
- convert a dramatic work into a novel or other nondramatic work;

- convert a novel, a nondramatic work or an artistic work into a dramatic work by way of performance in public or otherwise;
- make a sound recording of a literary, dramatic or musical work;
- reproduce, adapt and publicly present a work by cinematograph;
- communicate the work by telecommunication;
- present an artistic work created after June 7, 1988, at a public exhibition;
- in the case of a computer program that can be reproduced in the ordinary course of its use, or a sound recording, to rent it out; and,
- authorize any such acts.

### Copyrights vs trademarks, patents, industrial designs and integrated circuit topographies

People often confuse copyrights with other forms of intellectual property, particularly trademarks, patents, industrial designs and integrated circuit topographies.

**Trade-marks** are used to distinguish the goods or services of one person or company from those of another. Slogans, names of products, distinctive packages, or unique product shapes are all examples of features that are eligible for registration as trademarks. Sometimes, one aspect of

a work may be subject to copyright protection, and another aspect may be covered by trademark law. For example, if you created a new board game, you might enjoy a copyright on the artwork of the gameboard and a trade-mark, for the game's title.

**Patents** protect new and useful inventions such as processes, equipment, and manufacturing techniques. They do not cover any artistic or aesthetic qualities of an article. Unlike copyrights, patents can only be obtained by registration.

**Industrial designs** are protected for their original shape, pattern or ornamentation used to adorn a useful manufactured article. The artwork of your game board may be subject to copyright protection. Industrial design protection might be available for the board itself. Like patents, industrial designs are obtained only by registration.

**Integrated circuit topographies** are protected upon registration. Protection is for the topography of an integrated circuit product, which is a manufactured device made up of a series of layers of semiconductors, metals, insulators and other materials. The three-dimensional configuration is a "topography". The original design of the topography is protected.

For more information about these forms of protection contact:

Canadian Intellectual Property Office (CIPO)  
Industry Canada  
50 Victoria Street  
Place du Portage, Phase I  
Hull, Quebec  
K1A 0C9  
Tel.: (819) 997-1936  
Fax: (819) 953-7620

### **When copyright does not apply**

Titles, names and short word combinations are usually not protected by copyright. A "work" for copyright purposes must be something more substantial. However, if a title is original and distinctive, it is protected as part of the work it relates to.

You may have a brilliant idea for a mystery plot, but until the script is actually written, or the motion picture produced, there is no copyright protection. In the case of a game, it is not possible to protect the idea of the game, that is, the way the

#### **Copyright applies to:**

- a song
- a novel
- a play
- a magazine article
- a computer program

game is played, but the language in which the rules are written would be protected as a literary work. **Copyright is restricted to the expression of an idea; it does not extend to the idea itself.**

Other items which are not protected by copyright include:

- names or slogans;
- short phrases and most titles;
- methods, such as a method of teaching or sculpting, etc.;
- plots or characters; and
- factual information.

In the case of a magazine article including factual information, it is the expression of the information that is protected, and not the facts.

**Facts, ideas and news are all considered part of the public domain, that is, they are everyone's property.**

Note also that you cannot hold a copyright for a work that is in the public domain. You can adapt or translate such a work, and hold a copyright of your adaptation or translation.

#### **Copyright does not apply to:**

- title for a song
- idea for a plot
- a method of staging a play
- Hamlet (a work in the public domain)
- the facts in the article
- the name of the program (this could be protected through trade-mark legislation)

## Infringement

A copyright gives you the sole right to produce or reproduce your work, through publication, performances and so on, or to authorize such activities. Anyone who does such things without your permission is infringing, that is, violating your rights. Naturally, if you publish, perform or copy anyone else's work without their permission, you are infringing their rights.

One specific form of infringement is plagiarism. This is copying someone else's work and claiming it as your own. An obvious example would be taking a novel that someone else wrote and publishing it under your own name (or pen name). Plagiarism can also entail using a substantial part of someone else's work. An example would be copying a novel, and simply changing the title and names of the characters.

### Examples of infringement

#### Infringement

- reprinting an article without the copyright owner's permission
- playing records at a dance without the copyright owners' permission
- giving public performance of copyright play without permission
- photocopying articles to use in a classroom

Some activities, if carried out in private, are not considered infringement. For example, if you give a private performance of someone else's song or play in your own home, this would not be infringement. On the other hand, making a copy of a videotape movie protected by copyright is infringement, even if you only watch it in your own home.

## Fair dealing

People such as critics, reviewers and researchers often quote works by other authors in articles, books, and so on. Are they infringing copyright? Not necessarily. The Copyright Act provides that any "fair dealing" with a work for purposes of private study or research, or for criticism, review or newspaper summary, is not infringement. However, in the case of criticism, review, or newspaper summary,

the user is required to give the source and author's name, if known.

The line between fair dealing and infringement is a thin one. There are no guidelines that define the number of words or passages that can be used without permission from the author. Only the courts can rule whether fair dealing or infringement is involved.

For a complete list of exceptions to infringement, refer to the *Copyright Act*.

## Automatic protection for Canadian and foreign works

When you create an original work, you will automatically have copyright protection provided that, at the time of creation, you were:

- A** a Canadian citizen or British subject, or
- B** a resident within Her Majesty's Realms and Territories, or
- C** a citizen or subject of, or a person ordinarily resident in, a Berne Copyright Convention country, or a Universal Copyright Convention country, or
- D** a citizen or subject of any country to which the Minister has extended protection by notice in the *Canada Gazette*.

#### Not infringement

- quoting a few lines of the article in a research paper (fair dealing)
- playing records at home
- giving public performance of a play by Shakespeare (no copyright exists)
- gaining permission from the author and paying fee to him or her in order to use articles

You would also obtain automatic copyright if your work was first published in one of the above countries, even if you were not a citizen or subject of Canada, or of one of those countries.

In short, virtually everyone living in Canada can enjoy the benefits of automatic copyright protection. In addition, Canadians are protected in most foreign countries since most belong to one of two international treaties — the Berne Copyright Convention or the Universal Copyright Convention. Citizens of member countries enjoy the benefits of Canadian copyright law, and Canada also extends protection to certain non-member countries by way of notice in the *Canada Gazette*. Sound recordings are not covered under the copyright treaties, but Canada does extend protection for sound recordings to citizens of member countries. There is quite a variation internationally as to the nature of the protection given to sound recordings.

## Authorship

The author is normally the person who creates the work. See the discussion "Authorship" later in this guide under "Registration of Copyright".

## Ownership

Generally, if you are the creator of the work, you own the copyright. However, if you create a work in the course of employment, the copyright belongs to your employer unless there is an agreement to the contrary. Similarly, if a person commissions a photograph, portrait, engraving or print, the person ordering the work for valuable consideration is the first owner of copyright unless there is an agreement to the contrary. Also, you may legally transfer your rights to someone else, in which case that person owns the copyright.

## Duration

Copyright in Canada usually exists for the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of that calendar year. Therefore, protection will expire on December 31 of the 50th year, after which the work becomes part of the public domain and anyone can use it. For example, Shakespeare's plays are part of the public domain; everyone has an equal right to produce or publish them.

However, there are certain exceptions to the general rule of the life of the author plus 50 years. These are: (1) three types

of works, i.e., photographs, certain cinematographs, and sound recordings where protection is based on the date of creation or publication, not the life of the author; (2) works of Crown copyright; (3) certain special rules relating to works which are normally protected for the life of the author plus 50 years.

- 1 a) **Photographs:** The copyright exists for the remainder of the calendar year of the making of the initial negative or plate, or, where there was no negative or other plate, the making of the initial photograph, and 50 years thereafter.
- b) **Certain cinematographic works:** Films and videos made since 1944 which do not have an original arrangement, acting form or combination of incidents (i.e., most home videos) are protected for the remainder of the calendar year of first publication and for 50 years following the end of that calendar year. However, if they were not published within 50 years following the end of the calendar year of their making, copyright lasts for 50 years following the end of the calendar year of their making. (In other words, if a film or video is published within 50 years of its making, it is protected for 50 years from the

date of publication. If it is not published within that 50-year period, it is protected for 50 years from the date of making.) Films and videos of this type that were made before 1944 were protected for 50 years from the date of making. Films and videos which have an original arrangement, acting form or combination of incidents have always been protected for the life of the author plus 50 years.

**c) Sound recordings (Audio cassettes, recordings and similar devices known as mechanical contrivances):** Copyright lasts for the remainder of the calendar year of the making of the initial plate (master recording, tape, etc.) and 50 years after that.

**2 Works of Crown copyright:** These are works created for or published by the Crown, i.e., government publications. Copyright in these works lasts for the remainder of the calendar year in which the work was first published, and for 50 years after that. Copyright in unpublished works is perpetual.

**3** The following rules apply only to works which are normally protected for the life of the author plus 50 years. These rules do not apply to the works in 1)a), b), c) and 2) above, but they apply to all other works.

**a) Joint authorship:** Copyright exists for the life of the author who dies last and 50 years

following the end of that calendar year.

**b) Author unknown:** In the case of a work where the identity of the author is unknown, the copyright subsists for whichever of the following terms ends earliest:

- the remainder of the calendar year of the first publication of the work and a period of 50 years after that, or
- the remainder of the calendar year of the making of the work and 75 years after that.

**c) Posthumous works:** These are works which have not been published (or, for certain types of works, have not been published or performed or delivered in public) during the lifetime of the author. The copyright in these works exists from the date of publication, performance or delivery in public, whichever may first happen, until the end of that calendar year and 50 years thereafter.

**d) Unpublished works:** Works which have never been published (or, for certain types of works, have never been published nor performed or delivered in public) have unlimited copyright protection.

### Moral rights

Even if you sell your copyright to someone else, you still retain what are called "moral rights". This means that no one, including the person who owns the

copyright, is allowed to distort, mutilate or otherwise modify your work in a way that is prejudicial to your honour or reputation. Your name must also be associated with the work as its author, if reasonable in the circumstances. In addition, your work may not be used in association with a product, service, cause or institution in a way that is prejudicial to your honour or reputation without your permission.

Following are some situations which may infringe the author's moral rights.

*Example 1:* You've sold the copyright of a song to a certain publisher who converts your music into a commercial jingle without your permission.

*Example 2:* You've sold the copyright for your novel to a publisher who decides to give it a happy ending, instead of the tragedy you wrote.

You cannot sell or transfer your moral rights to anyone else, but you can waive them when you sell or transfer your copyright, or at a later date. A contract of sale or transfer may include a waiver clause. Moral rights exist for the same length of time as copyright, that is, for the lifetime of the author plus 50 years more, and pass to the heirs of the author, even if they do not inherit ownership of the copyright itself.

## REGISTRATION OF COPYRIGHT

### The benefits

You do not have to register your copyright to have protection in Canada, but when you register with the Copyright Office, you receive a certificate which can be used to your advantage in the event that your work is infringed.

A certificate of registration is evidence that your work is protected by copyright and that you—the person registered—are the owner. In the event of a legal dispute, you do not have to prove ownership; the onus is on your opponent to disprove it.

However, registration is no guarantee against infringement. You have to take legal action on your own if you believe your rights have been violated. Also, registration is no guarantee that your claim of ownership will eventually be recognized as legitimate. Note also that the Copyright Office does not check to ensure that your work is indeed original, as you claim. Verification of your claim can only be done through a court of law.

### How to register

You register a copyright by completing an application form and sending it to the Copyright Office, along with the appropriate fee. The form and detailed instructions for completing it as well as the current fee schedule are available from the Copyright Office (see address at the end of this booklet).

Please do not send a copy of your work along with the application. The Copyright Office does not review or assess works in any way, nor does the Office check to see whether the title of your work has already been used. Many works may appear with the same title, but if each work has been created independently, each will have its own copyright protection.

Please note, however, that you may need to send copies of your work to the National Library of Canada. Under the *National Library Act*, two copies of every book published in Canada, and one copy of every sound recording manufactured in Canada that has some Canadian content, must be sent to the National Library within one week of publication. (Your publisher may have already made these arrangements.) For more information on this, contact:

Legal Deposit  
National Library of Canada  
395 Wellington Street  
Ottawa, Ontario  
K1A 0N4  
Tel.: (819) 997-9565

When your application form is received in the Copyright Office, it is reviewed to make sure you have filled it out properly. If necessary, suggestions for changes are made, the relevant information is entered into a computerized databank and a registration certificate is issued.

Once a registration has been issued, the Copyright Office has the authority to make small corrections, such as the removal of clerical errors made in preparing an application or a registration document. However, only the Federal Court of Canada can authorize substantial changes.

### Authorship

Since duration of a copyright is usually based on an author's lifetime, it is important for the Copyright Office to know the author's name.

If you are the creator of a work (e.g., writer, artist, composer or playwright) you are considered its author. In most cases, therefore, you should insert your name and address in the relevant section of the copyright application form. If the work was created by an employee of yours, the employee's name should appear on the form as author (even though you own the copyright). If there are two authors of the same work, give the names and addresses of both. If there are many contributing authors, all their names and addresses should be given. However, if the work was created by many people under the direction of an editor-in-chief, that person's name may be given as author.

The author of most types of works is the individual who created the work. For all works normally protected for the life of the author plus 50 years (i.e., literary works, musical works) the author must be an individual as opposed to a corporation.

However, for three types of works, photographs, certain cinematographic works, and sound recordings, there are special rules defining who the author is. For these types of works, the author may be either an individual or a corporation. The author of a photograph is the person who owned the negative or original photograph (if there was no negative, as in Polaroid or electronic photography) at the time it was made. For cinematographic works made prior to January 1, 1994 which do not have an original arrangement, acting form or combination of incidents (i.e., most home videos) the author is the person who owned the negative or original video tape at the time it was made. For cinematographs made on or after January 1, 1994, there is no special rule and the author is simply the person who created the work. For sound recordings made prior to January 1, 1994, the author is the person who owned the master tape or original recording at the time it was

made. The author of a sound recording made on or after January 1, 1994 is the person by whom the arrangements necessary for the making of the sound recording were undertaken.

When deciding who the author of a work is, you must use the rule which applied at the time the work was created regardless of when the work is registered.

The persons authorized to sign the copyright application form are:

- A** you (the applicant) or your agent;
- B** a partner, in the case of a firm;
- C** a director, secretary or other principal officer in the case of a corporation; or
- D** your heirs or legal representatives. (An author's work is part of his or her estate, and the heirs or successors may register a copyright if this has not been done before the author's death.)

Some authors prefer to use a nom-de-plume, or pen name, rather than their real names on their published works. You may include your nom-de-plume on your application for registration, but you must also give your full legal name. This is necessary because, without your legal name, it would be difficult to determine the full duration of the copyright, i.e., your lifetime plus 50 years.

## Nature of the work

You will have to indicate on the application which category your work falls into: literary, artistic, musical, dramatic, or a combination of these, or a mechanical contrivance. For more information on these categories, consult the instruction sheet provided with the application form.

You will also have to indicate whether your work is published or unpublished. A work is considered published when copies of it have been issued to the public. Also, the construction of an architectural work and the incorporation of an artistic work into an architectural work constitute publication.

The following do not constitute publication: the performance in public of a literary, dramatic or musical work, the delivery in public of a lecture, the communication of a work to the public by telecommunication, or the exhibition in public of an artistic work.

## Length of the registration process

The registration process takes eight weeks if the Copyright Office staff reviews your application and accepts it without further questions. If amendments are required, the processing time may be longer. Registration

occurs once any amendments have been made and the application is accepted. The Office then issues a certificate of registration.

### Registration fees

You must pay a prescribed fee when applying for registration of copyright. That fee covers the review of your application and, if it is acceptable, a registration certificate will be issued at no additional charge. However, if your application is withdrawn or refused, the fee is not refunded.

Send your payment with your completed application form. Payment may be by cheque or postal money order made out to the Receiver General for Canada.

Copies of the current fee schedule as well as the application form are available from the Copyright Office at the address given on page 16.

Foreign applicants should pay by money order payable in Canadian funds.

Registration is valid for as long as the copyright for the work exists. Once you register your copyright, you do not have to pay any additional fees to maintain or renew it. If you register the copyright of an unpublished work, you do not have to register again after publication.

### What the registration covers

Normally, each song, book, recording, and so forth is considered a separate work and requires a separate application and fee. There is no blanket-type registration for several works by one author. However, if you are registering a book of poems, songs, photographs, etc., you may register the book as one work. Also note, that if the work is published in a series of parts, such as an encyclopedia, one registration covers all the parts in the series.

### Indicating copyright

There is no requirement to mark your work under the *Copyright Act*. The Universal Copyright Convention provides for marking with a small “c” in a circle, the name of the copyright owner and the year of first publication, for example, © Jane Doe, 1986. Although not obligatory in Canada, such marking can serve as a reminder to others of a copyright as well as providing the name of the owner. Some countries that are members of the Universal Copyright Convention but not of the Berne Copyright Convention require such marking. You may use this notice even if you have not registered your work.

### Policing your copyright

The Copyright Office is not responsible for ensuring that your copyright is not being infringed. This is your responsibility. Suppose a person publishes a novel very much like yours, simply disguising the plagiarism with a few name changes. It is up to you to launch legal action. It will then be up to the courts to decide whether indeed you have been wronged. However, the Copyright Act does contain criminal remedies which apply to certain types of serious infringement or piracy.

### Agreements: assignments and licences

As the owner of a copyright, you may confer your rights to produce or reproduce a creative work to other people through a legal agreement. There are many kinds of agreements, with the main types being assignments and licences.

An **assignment** occurs when you transfer part, or all, of your rights to another party. The assignment may be for the whole term of the copyright, or for a certain part of it either generally or subject to territorial limitations. In this case, you have given up your rights for a certain period, or completely. You do not have to register your assignment with the Copyright Office, but it is wise to do so. Suppose the original copyright owner does assign the same rights to two separate parties for the same work. If one party does not register its assignment, the assignment that was registered will be considered the valid one.

A **licence** gives someone else permission to use your work for certain purposes and under certain conditions, but you still retain ownership. You have not given up your rights.

To be valid, an assignment or licence must be in writing and signed by you, the owner.

Assignments and licences, which are considered “grants of interest” in a copyright, may be registered with the Copyright Office. All you have to do is send in the original agreement or a certified copy of it, along with the prescribed fee (see the fee schedule). Registration takes about six weeks. The Copyright Office will retain a copy of the documentation and return your documentation, along with a certificate of registration.

### Royalties and tariffs

Royalties are sums paid to copyright owners as commission for sales of their works or permission to use them. For example, a composer is entitled to a royalty every time a radio station publicly plays his or her record. You do not have to pay royalties for a private performance, such as playing music in your home. But you do if you are holding a dance or concert, since this is considered a public performance. In many cases, the concert hall, hotel, or other facility will have already made the necessary arrangements for paying royalties.

Tariffs are set fees that users must pay for using certain copyright material. For example, cable companies pay tariffs for permission to transmit programs. Both tariffs and royalties account for a great many business transactions every day. To help regulate this complex and growing sector of the economy, the Canadian government has set up a public tribunal known as the Copyright Board. This Board reviews and approves fees set by the Canadian performing rights society, SOCAN, the Society of Composers, Authors and Music Publishers of Canada, sets tariffs for cable retransmission and arbitrates tariffs if there is a disagreement between a licensing body and another party.

In addition, the Board grants licences for the use of published works in certain cases. For example, if you wanted to use a published work, but could not locate the copyright owner, you could apply to the Copyright Board for permission. You would most likely have to pay a fee which would be kept by the Board on behalf of the owner until that person is eventually be located. For more information contact:

The Secretary of the Board  
Copyright Board of Canada  
56 Sparks Street, Suite 800  
Ottawa, Ontario  
K1A 0C9  
Tel.: (613) 952-8621  
Fax: (613) 952-8630

## Collectives

Sometimes people find it inconvenient or difficult to administer the rights they hold through the copyright system. In such cases, they might choose to join a collective, that is, an organization that collects royalties on behalf of its members. Collectives, also known as licensing bodies, grant permission to people to use works owned by their members and determine the conditions under which those works can be used. The organization may also launch a civil suit on behalf of a member in the case of copyright infringement.

There is a wide range of collectives covering such areas as television and radio broadcasts, sound recordings, reprography (photocopying), performances, video recordings and visual arts.

One example is a reprography collective called CANCOPY which negotiates licences with users, such as schools and organizations, and collects fees on behalf of copyright owners for permission to photocopy their works. Suppose you are the owner of the copyright in a history of Canada: membership in the collective allows it to grant permission to teachers, for example, to copy chapters of your book and collect fees on your behalf.

Remember that you may not make photocopies of material protected by copyright (other than for purposes of fair dealing) without permission nor may a library do this for you. To seek permission, contact the owner or CANCOPY, if the owner is a member.

CANCOPY  
214 King St. West, Suite 312  
Toronto, Ontario  
M5H 3S6  
Tel.: (416) 971-9882  
Fax: (416) 971-5633

In Québec:  
L'Union des écrivaines et  
écrivains québécois (L'UNEQ)  
3492, avenue Laval  
Montréal, Québec  
H2X 3C8  
Tel.: (514) 849-8540  
Fax: (514) 949-6239

You may obtain a list of some other Canadian collectives through the Copyright Office or the Copyright Board.

## Performing rights societies

A performing rights society is a collective that deals with musical works, collecting royalties on behalf of composers, lyricists, songwriters and music publishers for the public performance or broadcasting of their music. There is currently only one such organization in Canada, SOCAN, the Society of Composers, Authors and Music Publishers of Canada.

SOCAN  
41 Valleybrook Drive  
Don Mills, Ontario  
M5B 2S6  
Tel.: (416) 445-8700  
Fax: (416) 445-7108

## Government publications

Government publications are usually protected by Crown Copyright. You may seek permission to use or reproduce government works by writing to:

Permissions Officer  
Canada Communication Group  
Publishing Division  
Ottawa, Ontario  
K1A 0S9  
Tel.: (819) 956-4679  
Fax: (819) 997-8863

## For more information

Staff at the Copyright Office will be pleased to assist you with general questions about copyright and the registration process. Address your correspondence to:

Copyright Office  
Canadian Intellectual Property  
Office (CIPO)  
Industry Canada  
50 Victoria Street  
Place du Portage, Phase I  
Hull, Quebec  
K1A 0C9

You may also telephone for general information and application forms at (819) 997-1936 between 8:30 a.m. and 4:45 p.m. Eastern Time, Monday through Friday, except on legal holidays.

Any correspondence sent to the Copyright Office through the priority courier service of Canada Post Corporation will be considered received by the Office on the date stamped on the envelope by the priority courier service.

If you are calling about a particular application, telephone at (819) 997-1729 and quote your file number. Please do not call the office to find out the status of a new application until at least eight weeks after sending it.

## Other pamphlets

For more detailed information on various aspects of copyright, you may wish to consult the following circulars:

- 1** Copyright protection for computer programs
- 2** Musical works and mechanical contrivances
- 3** Protection for games
- 4** Performing rights societies and other collectives
- 5** Changes/corrections to the Copyright Register
- 6** Authorship
- 7** Describing the nature of a work
- 8** Slogans/titles/short phrases /names
- 9** Rental rights for sound recordings and computer programs

All of these circulars are available through the Copyright Office at the address given above. Additional circulars may be added from time to time.

**Artistic work** – Visual representation such as a painting, drawing, map, photograph, sculpture, engraving or architectural plan.

**Assignment** – Transfer of copyright from the original owner to another party.

**Author** – The creator of an artistic, literary, musical or dramatic work.

**Berne Copyright Convention** – An international treaty extending copyright protection in member countries to nationals of other member countries. Canada is a signatory of this treaty.

**CANCOPY** – A reprography collective that grants licences to photocopy works and collects fees on behalf of its members.

**Canadian Intellectual Property Office (CIPO)** – Federal agency responsible for the administration of intellectual property laws (includes Copyright Office).

**Collective** – Organization that administers rights granted by the copyright system on behalf of copyright owners who have joined that collective.

**Copyright** – Exclusive rights to a work including the sole right to publish, produce, reproduce, translate, communicate to the public by telecommunication and, in some cases, rent a work, and also includes the right to perform a work in public, and, under certain conditions, to exhibit in public an artistic work.

**Copyright Act** – Federal legislation governing copyright in Canada.

**Copyright Board of Canada** – A tribunal that reviews and must approve all tariffs and fees proposed by the SOCAN, the Canadian performing rights society. The Board also grants licences for use of works when the copyright owner cannot be located.

**Copyright infringement** – Violation of copyright through unauthorized copying or use of a work under copyright.

**Copyright Office** – The federal government office responsible for registering copyrights and copyright assignments in Canada.

**Crown copyright** – Copyright in works prepared for or published by the government, i.e., government publications.

**Dramatic work** – Includes plays, screenplays, scripts, films, videos and choreographic works and translations of such works.

**Fair dealing** – Use of works for purposes of private study, research, criticism, review or newspaper summary that is not considered to constitute infringement of copyright.

**Industrial design** – a) The shape, pattern or ornamentation (or combination of these) of an industrially produced useful object. b) Legal protection against imitation of these elements.

**Integrated circuit topography** –

a) The three-dimensional configuration of the electronic circuits embodied in integrated circuit products or layout designs. b) Legal protection against imitation of this configuration.

**Intellectual property** – A form of creative endeavour that can be protected through a copyright, trade-mark, patent, industrial design or integrated circuit topography.

**Licence** – Legal agreement granting someone permission to use a work for certain purposes or under certain conditions. A licence does not constitute a change in ownership of the copyright.

**Literary work** – Work consisting of text which includes novels, poems, song lyrics without music, catalogues, reports, tables and translations of such works. It also includes computer programs.

**Marking** – Indicating copyright with a small “c” in a circle, the name of the copyright owner and the year of first publication.

**Mechanical contrivance** – A device which reproduces sounds, such as a cassette, record or CD player.

**Moral rights** – Rights an author retains over the integrity of a work and the right to be named as its author even after sale or transfer of the copyright.

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**Musical work** – Work which consists of music plus lyrics or music only.

**Nom-de-plume** – Pen name.

**Patent** – A government grant giving the owner the right to exclude others from making, using or selling an invention.

**Performing rights society** – An organization that administers rights to perform musical works on behalf of composers, lyricists, songwriters and music publishers. (See SOCAN.)

**Plagiarism** – Using the work (or part of it) of another person and claiming it as your own.

**Posthumous work** – A work which is published for the first time (or, for certain types of works, published or performed or delivered in public for the first time) after the author's death.

**Publication** – Making copies of a work available to the public. The construction of an architectural work and the incorporation of an artistic work into an architectural work are considered publication.

**Registration** – The formal record of a copyright by the Copyright Office.

**Royalty** – A sum paid to copyright owners for the sale or use of their works.

**SOCAN** – The Society of Composers, Authors and Music Publishers of Canada. SOCAN is the only performing rights society in Canada.

**Tariff** – A standard charge for use of copyrighted works. Usually applies to fees paid by users of musical works and cable companies for the rebroadcast of programs.

**Trade-mark** – A word, symbol or design, or combination of these, used to distinguish the goods or services of one party from those of another.

#### **Universal Copyright Convention**

**Convention** – An international treaty extending copyright protection in member countries to nationals of other member countries. Canada is a signatory of this treaty.

## TWENTY COMMON QUESTIONS ABOUT COPYRIGHT

### Q1 What is a copyright?

**A** A copyright is the exclusive right to copy a creative work or allow someone else to do so. It includes the sole right to publish, produce or reproduce, or perform a work in public, translate a work, communicate a work to the public by telecommunication, to exhibit an artistic work in public under certain conditions, and in some cases, rent the work.

### Q2 To what does copyright apply?

**A** Copyright applies to all original literary, dramatic, musical and artistic works. These include books, other writings, music, sculptures, paintings, photographs, films, plays, television and radio programs, and computer programs. Copyright also applies to sound recordings such as records, cassettes, and tapes.

### Q3 What is not protected by copyright?

**A** Themes, ideas, most titles, names, catch-phrases and other short-word combinations of no real substance.

### Q4 Who owns the copyright?

**A** Generally, the owner of the copyright is:

- a) the creator of the work; or
- b) the employer, if the work was created in the course of employment unless there is an agreement to the contrary;
- c) the person who commissions a photograph, portrait, engraving or print for valuable consideration unless there is an agreement to the contrary; or

d) some other party, if the original owner has transferred his or her rights.

### Q5 How do I obtain copyright?

**A** You acquire copyright automatically when you create an original work.

### Q6 Do I have to do anything to be protected?

**A** No. Since you obtain copyright automatically, you are automatically protected by law. However, it is still a good idea to register your copyright and to indicate a notice of copyright on your works.

### Q7 What are the benefits of copyright registration?

**A** Registration gives you a certificate stating that you are the copyright owner. You can use this certificate in court to establish ownership. (The onus is on your opponent to prove that you do not own the copyright.)

### Q8 How do I register a copyright?

**A** You file an application with the Copyright Office, along with a prescribed fee. The application form and instructions for filling it out are available from the Copyright Office. The registration process normally takes six to eight weeks. The fee covers review of your application, registration and your official certificate.

### Q9 Once I have registered, do I have to pay further fees to maintain my copyright?

**A** No. The registration fee is a one-time expense.

### Q10 How long does copyright last?

**A** Generally, copyright in Canada exists for the life of the author plus 50 years following his or her death. There are some exceptions. Please refer to the section called "Duration" in the part "Copyright Protection" of this Guide, on page 9.

COPYRIGHT PROTECTION  
ALWAYS EXPIRES  
DECEMBER 31 OF THE  
LAST CALENDAR YEAR OF  
PROTECTION.

### Q11 Does the Copyright Office check to ensure that my claim of copyright is legitimate?

**A** No, the Office does not verify ownership. Only the courts can do that.

### Q12 Do I need to mark my work with a notice of copyright?

**A** This isn't necessary to be protected in Canada, however, you must mark your work to be protected in some other countries. Even though it is not always required, marking is useful since it serves as a general reminder to everyone that the work is protected by copyright.

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**Q13** *Is the copyright of a Canadian author valid in foreign countries?*

**A** Yes, as long as the country in question belongs to either the Berne Copyright Convention or the Universal Copyright Convention. These conventions include most countries in the world.

**Q14** *Is the copyright of a foreign author valid in Canada?*

**A** Yes. Please refer to the section entitled “Automatic Protection for Canadian and foreign works”.

**Q15** *Should I send copies of my work with my application?*

**A** No, copies aren’t required.

**Q16** *What is the difference between an assignment and a licence?*

**A** An assignment is a transfer of ownership of the copyright from one party to another. A licence is a contract which, for specific purposes, allows someone to use a work temporarily.

**Q17** *What is copyright infringement?*

**A** Unauthorized use of copyright material. Plagiarism — passing off someone else’s work as your own — is a form of infringement.

**Q18** *What is “fair dealing”?*

**A** Use or reproduction of a work for private study, research, criticism, review or newspaper summary.

**Q19** *Will the Copyright Office prevent others from infringing my rights?*

**A** No. The responsibility for policing your copyright rests with you.

**Q20** *Can libraries or educational institutions make multiple copies of parts of books or articles for student use?*

**A** No. The making of multiple copies requires the consent of the copyright owner. This consent may be obtained through a licensing agreement with a photocopying collective. However, the Copyright Act does allow the copying by individuals of parts of works for private study or research. Such copying should be minimal. This exception falls within the “fair dealing” section of the Act.



